

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

**TO: ALL ASSISTANT STORE MANAGERS/ASSISTANT STORE LEADERS
EMPLOYED BY KROGER BETWEEN OCTOBER 8, 2018 AND THE PRESENT**

PLEASE READ THIS NOTICE – A LAWSUIT MAY AFFECT YOUR RIGHTS

Two former Assistant Store Managers (the “Plaintiffs”) have brought a collective action lawsuit against The Kroger Co. (“Kroger”), claiming that it misclassified them and other Assistant Store Managers, including Assistant Store Manager-Operations, Assistant Store Manager-Merchandising, Assistant Store Manager-Human Resources, Assistant Store Leader-TM, and Assistant Store Leader-HM, as “exempt” employees and failed to pay them overtime for working more than 40 hours a week as required by the Fair Labor Standards Act (“FLSA”). Kroger denies the Plaintiffs’ allegations and maintains that all Assistant Store Managers have been properly classified as exempt employees under the FLSA.

The Court has ordered distribution of this Notice to all individuals who worked as Assistant Store Managers and/or Assistant Store Leaders for Kroger in its Central (Indianapolis), Michigan, Louisville, Dallas, Houston and Mid-Atlantic (Roanoke) divisions at any time between October 8, 2018 and [date of Court’s Order]. The Court has not decided who is right and who is wrong. Your legal rights may be affected, and you have a choice to make now.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT | |
|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ASK TO BE INCLUDED | <p>If you choose to be included in this collective action, you will keep the possibility of getting monetary recovery or benefits that might come from a trial or a settlement in this lawsuit. You give up any rights to sue Kroger on your own for the same claims in this lawsuit.</p> <p>If you wish to be included, you must complete and return the “Consent to Join” form included with this Notice by no later than [redacted] [60 days from mailing of notice, or 30 days from remailing in the event an individual does not initially consent to join].</p> |
| DO NOTHING | <p>By doing nothing, you will not be included in this lawsuit. This means that you give up the possibility of a monetary recovery that may come from a trial or settlement if those bringing the lawsuit are successful.</p> <p>You keep any rights to sue Smith’s Food & Drug separately about the same legal claims in this lawsuit. You should be aware that your time to bring FLSA claims is limited by a two- or three-year statute of limitations.</p> |

1. Why did I get this notice?

You are receiving this notice because Krogers' records show that you were employed as an Assistant Store Manager and/or Assistant Store Leader for at least one week between October 8, 2018 and [date of order]. The Court has authorized this notice to be sent to you and other Assistant Store Managers and Assistant Store Leaders to inform you of the case and your right to join it.

2. What is this lawsuit about?

The lawsuit alleges that Kroger improperly classified Assistant Store Managers and Assistant Store Leaders as "exempt" employees and failed to pay them overtime for hours worked over 40 in a workweek. The Plaintiffs allege that Assistant Store Managers and Assistant Store Leaders spend the majority of their time performing the same duties as non-exempt employees, including serving customers, ringing customers up on the cash register, stocking shelves, unloading trucks, moving merchandise, counting inventory, and cleaning the store. The Plaintiffs allege that Assistant Store Managers and Assistant Store Leaders should also be classified as "non-exempt" employees and paid overtime compensation under the FLSA. The Plaintiffs seek to recover overtime wages and an additional equal amount as liquidated damages, plus attorneys' fees and costs, for themselves and all other Assistant Store Managers and Assistant Store Leaders who join the lawsuit.

Kroger asserts that all Assistant Store Managers and Assistant Store Leaders have been properly classified as exempt employees, and that they have paid all Assistant Store Managers and Assistant Store Leaders appropriately and lawfully. The Court has not yet decided who is correct.

This lawsuit is known as *Schell, et al. v. The Kroger Company* and is proceeding in the United States District Court for the Southern District of Ohio, Case No. 1:21-cv-00103-MRB.

3. What is a collective action and who is involved?

In a collective action, one or more individuals can bring a lawsuit on behalf of others who are "similarly situated" to them. If you complete and return the enclosed Consent to Join form, you will join the case and become part of the "collective." One court will resolve the issues for the entire collective.

4. Why is this lawsuit a Collective Action?

The Court has made a preliminary determination that the Plaintiffs may be similarly situated to other Assistant Store Managers and Assistant Store Leaders and has authorized this case to proceed as a collective action under Section 216(b) of the FLSA.

5. How do I ask to be included in the Collective?

Enclosed is a "Consent to Join" form. **If you choose to join this lawsuit, you must read, sign, and promptly return the Consent to Join form by [redacted] [60 days from mailing of notice, or 30 days from remailing in the event an individual does not initially consent to join].** You may

electronically sign and submit the form online at [case website]. You can also fax it to the below number or email it to the below email address. Finally, you can mail it back in the enclosed postage-paid envelope or another envelope, so that it is postmarked by [] [60 days from mailing of notice, or 30 days from remailing in the event an individual does not initially consent to join]. Should the enclosed envelope be lost or misplaced, the Consent to Join Form must be sent to:

[CLAIMS ADMINISTRATOR'S MAILING ADDRESS]
[FAX]
[EMAIL ADDRESS]
[PHONE NUMBER]

The signed Consent to Join form must be postmarked, emailed, or faxed by [] [60 days from mailing of notice, or 30 days from remailing in the event an individual does not initially consent to join]. If you lose or misplace the enclosed Consent to Join form, please contact [claims administrator] at [telephone numbers]. If you have questions, you may contact any of Plaintiffs' lawyers listed below.

6. What happens if I do nothing at all?

If you do nothing, you will not be entitled to share in any amounts recovered by the Plaintiffs for the FLSA claims in this case and will not be affected by any decision regarding those claims, whether favorable or unfavorable. You will also be free to hire your own lawyer and file your own FLSA lawsuit. You should be aware that your time to bring FLSA claims is limited by a two- or three-year statute of limitations, and delay in joining this action, or proceeding separately, may result in some or all of your claims expiring.

7. What happens if I join the collective?

If you choose to join the case, you will be bound by and share in any ruling, settlement or judgment, whether favorable or unfavorable. By joining this lawsuit, you agree to have the Plaintiffs and their counsel act as your representatives and make decisions on your behalf concerning the case. Decisions made and agreements entered into by the Plaintiffs will be binding on you if you join the lawsuit, including approving any settlement, entering into an agreement with counsel regarding payment of attorneys' fees and costs, and deciding all other matters pertaining to this lawsuit.

While this suit is pending, you may be asked to provide documents or information relating to your employment, or otherwise participate in this matter.

8. Will my participation affect my employment?

No. Federal law prohibits an employer from firing or in any way retaliating against you because you have joined this lawsuit.

If you believe that you have been penalized, discriminated against, or disciplined in any way as a result of your receiving this notification, considering whether to join this lawsuit, or actually

joining this lawsuit, please contact Plaintiffs' attorneys or other attorneys of your choosing right away.

9. Do I have a lawyer in this case and how will the lawyers get paid?

If you choose to join this lawsuit, you will be represented by the attorneys who represent the Plaintiffs, Conway Legal, LLC, and Meizlish & Grayson. Further information about Plaintiffs' counsel is available at www.conwaylegalpa.com and www.meizgray.com, and their contact information is listed in Section 10, below.

The Plaintiffs have entered into a contingency fee agreement with Plaintiffs' counsel, which means that if Plaintiffs do not win, there will be no attorneys' fees or costs chargeable. Under the fee agreement, in the event there is a recovery, Plaintiffs' counsel will apply to the Court for a portion of any settlement obtained or money judgment entered in favor of Plaintiffs and the members of the collective in the amount the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the amount of time expended on the lawsuit, or (2) one-third of the gross settlement or judgment amount. Fees may be part of a settlement obtained or money judgment entered in favor of Plaintiffs, or may be ordered by the Court to be separately paid by Kroger or may be a combination of the two.

10. How can I get more information?

If you have any questions, you may write, e-mail or call counsel for the Plaintiff:

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PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THIS NOTICE.